

**OPINION
51-209**

April 12, 1951 (OPINION)

WELFARE

RE: Residence

This office has a request for an opinion as to the effect of subsection 4 of House Bill 795 enacted by the 1951 Legislature.

The material section reads as follows: "For the purposes of this section the time spent while receiving institutional care in any state licensed home for the aged, infirm, neglected or indigent shall not be included in the computation of time necessary to establish residence hereunder."

It is our opinion that this new law must be construed in connection with the provisions of Section 50-0722 with particular reference to subsections 2 and 3 of said section. you will note that subsections 2 and 3 read as follows:

2. Whose residence cannot be determined to be in any county in North Dakota or in any other state in the United States; and
3. Who have resided in North Dakota for five years and who meet all the other state requirements for old age assistance."

It is our opinion that said subsections 2 and 3 intended to take care of an indigent person in North Dakota who had no residence in any county in North Dakota or any county in the United States.

The difficulty that confronts this office in the construction of subsection 4 of House Bill 795 is this: That if a person is within North Dakota more than a year but is a resident of any state licensed home for the aged he will, after one year, have lost his residence in any foreign state from which he may have come and provisions of subsection 4 prevents establishing a residence for welfare purposes in the State of North Dakota.

It is our opinion that subsection 4 of House Bill 795 was enacted to prevent a resident of a licensed home for the aged from becoming a load upon the county in which such licensed home was situated. We also believe that it was the intent of the drafters of that subsection that any indigent person who had no established residence for old age assistance in any county in this state or in any other state should become the responsibility of the State Welfare Board, and that the cost of old age assistance grants not paid by the federal government should be paid by the state agency, notwithstanding the fact that subsection 3 of Section 50--722 provides for residence in North Dakota for five years.

It is our opinion that in view of the apparent intention of the

Legislature in re-enacting House Bill 795 that the Public Welfare Board would be justified and should make payment of the entire cost of old age assistance grants not paid by the federal government to persons who qualify under subsections 2 and 3 of Section 50-0722, and that the said Board be authorized to pay the entire cost of old age assistance grants not paid by the federal government even though the person whose residence cannot be determined to be in any county in the state of North Dakota or of any other state in the United States may be paid by the Public Welfare Board if he had resided in the state for one year rather than in the state for five years as provided in subsection 3 of Section 50-0722.

Any other construction would, in our opinion, result in a situation whereby indigent persons who have no residence in any county in this state or in any other state under subsection 4 of House Bill 795 would be entirely without relief.

It is respectfully suggested that legislation be submitted to the 1953 Session clarifying the problems that are apparent from the above opinion.

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